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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

KENNETH BASH, et al.

Defendants.

No. 1:20-cr-00238 JLT SKO

**DEFENDANT KENNETH BASH'S REPLY TO
GOVERNMENT'S OPPOSITION TO HIS
MOTION TO DISMISS COUNT ONE OF THE
SECOND SUPERSEDING INDICTMENT**

Date: July 15, 2024
Time: 10:00 a.m.
Place: Courtroom 4

Defendant Kenneth Bash has moved to dismiss Count One of the Second Superseding Indictment for failure to allege a crime against him. His motion is based upon the allegations of that Count,¹ and that is all that it is based upon. The point that defendant wishes to stress in his motion is that the specific allegations in Count One refute general allegations

As set forth in Salinas v. United States (1997) 522 U.S. 52, at 63-64; in a conspiracy to violate RICO, "[t]he partners in the criminal plan must agree to pursue the same criminal objective and may divide up the work, yet each is responsible for the acts of each other". The conspiracy is the agreement.

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¹ Those allegations include the general allegations that are incorporated by reference.

1 In Salinas the sheriff and his Chief Deputy, who oversaw and was in charge of the jail,
2 agreed to allow a prisoner to have unsupervised contact visits with his wife or girlfriend. At issue
3 was whether Salinas, the deputy, must personally agree to commit two predicate RICO acts of
4 accepting a bribe. What was not at issue was whether Salinas agreed to operate or manage the
5 affairs of the enterprise (the jail) through a pattern of RICO acts. It was clear that he had.

6 Salinas was cited with approval in Ocasio v. United States (2016) 578 U.S. 282, a Hobbs
7 Act conspiracy case. Again, the Court held that for a conspiracy, each conspirator must have
8 specifically intended that **some conspirator** commit each element of the substantive offense they
9 agreed to commit (page 292, original emphasis).

10 The Court gave the following example of what would not constitute a conspiracy, at page
11 298 of its Ocasio opinion, addressing bribes to public officials:

12 “For example, imagine that a health inspector demands a bribe from a restaurant
13 owner, threatening to close down the restaurant if the owner does not pay. If the owner
14 reluctantly pays the bribe in order to keep the business open, the owner has “consented” to
15 the inspector’s demand, but his mere acquiescence in the demand does not form a
16 conspiracy.”

17
18 The allegations of Count One refute the contention that Mr. Bash agreed how the affairs
19 of the RICO enterprise, identified as the Aryan Brotherhood, were to be conducted. As noted in
20 his initial motion, the Grand Jury has charged in Count One that the AB is governed by a three-
21 man commission with authority over the entire enterprise. Certain senior members of the
22 organization have more authority than others (par. 7).²

23 Members who do not fulfill their obligations to the AB are subject to murder (par. 10). In
24 addition to members, the enterprise includes associates, who are closely affiliated with the AB.

25 Associates who do not fulfill their obligations to the enterprise are subject to murder (par.
26 11). Inmates and others who do not follow the orders of the AB are subject to retaliation,
27 including physical assault or murder (par. 13).

28 ² Paragraph references are to Count One of the Second Superseding Indictment.

1 The leaders and members of the AB direct, sanction, approve, and permit other members
2 and associates to carry out criminal acts in furtherance of the enterprise (par. 15a).

3 These above allegations are incorporated into Count One, the RICO conspiracy.
4 Defendant Bash is identified in Count One as a person “employed by and associated with the AB”
5 (par. 18).³ He is alleged to have conspired to violate 18 U.S.C. §1962(c) by conducting and
6 participating “directly and indirectly, in the conduct of the affairs of the AB through a pattern of
7 racketeering activity” (par. 18).

8 As the Indictment affirmatively alleges that leaders and members of the AB, which Mr.
9 Bash is not, are the ones who direct, sanction, approve, and permit other members and associates
10 to carry out criminal acts, it is clear that Mr. Bash has no part in any agreement by AB members
11 as to how the affairs of the Aryan Brotherhood should be conducted. That is the conspiracy
12 defined under Salinas, supra. The RICO conspiracy charged does not set forth essential
13 allegations of a violation of 18 U.S.C. §1962(d) by Mr. Bash because it refutes that he agreed
14 how the enterprise was to operate, and affirmatively alleges that if he did not do as directed he
15 was subject to murder.

16 Accordingly, Mr. Bash moves to dismiss Count One of the Second Superseding
17 Indictment alleged against him.

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20 Dated: May 20, 2024

Respectfully submitted,

21
22 /s. W. Scott Quinlan
23 W. Scott Quinlan, Attorney for
24 Defendant, KENNETH BASH
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27

28 ³ Mr. Bash is not listed among those who direct, sanction, approve, or permit criminal acts.